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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,860	08/27/2001	Lynnwood C. Cook	COOK 3.2	3207

7590 07/03/2002

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[REDACTED] EXAMINER

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[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

3643

DATE MAILED: 07/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/939,860	COOK, LYNNWOOD C.	
	Examiner	Art Unit	
	Bethany L. Griles	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,5-9,11,14 and 15 is/are rejected.
- 7) Claim(s) 4,10,12,13 and 16-18 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 August 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beatty (US 5,335,449) in view of Schimmerling (FR 2642697 A1)

Regarding claims 1 and 14, a plant shell comprising a peripheral wall (see fig 3), being formed of biodegradable constituents (col 3, line 32); that it is water responsive (col 3, line 33); is of porosity to permit water and root penetration (see fig 3); and that it will retain its shape until water is introduced (col 3, line 22).

Beatty does not disclose that the constituents include a particulate organic base.

Schimerling discloses an organic based material (see line 2 of abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Schimmerling to the invention of Beatty, as an organic material is biodegradable and porous, as required by Beatty.

Regarding claims 2 and 15, Beatty discloses a combination of organic ingredients to increase water retention and time release nutrients (col 3, lines 30-60).

Beatty does not disclose that the constituents of the shell include a particulate organic base.

Schimerling discloses an organic base material (see line 2 of abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Schimmerling to the invention of Beatty, as an organic material is biodegradable and porous, as required by Beatty.

Regarding claim 3, Beatty discloses that the shell permits root and water permeation (col 3, lines 8-16).

Claims 5-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beatty in view of Schimmeling as applied to claims 1-3 above, and further in view of Bellucci et al. (6,195,935) (hereinafter known as 935).

Regarding claim 5, Beatty as modified by Schimmerling discloses the shell as described in claim 1.

Beatty as modified by Schimmerling does not disclose peat moss, manure, and top soil.

935 discloses organic matter (col 2, line 24) (which includes peat moss and manure); and top soil (col 2, line 15).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of 935 to the invention of Beatty as modified by Schimmerling to provide the plant with a viable growing environment. All of the components listed above are regularly used in horticulture.

Regarding claim 6, Beatty as modified by Schimmerling discloses the shell as described in claim 1.

Beatty as modified by Schimmerling does not disclose fertilizer.

935 discloses fertilizer (col 2, line 20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of 935 to the invention of Beatty as modified by Schimmerling to provide the plant with a viable growing environment. Fertilizer is regularly used in horticulture.

Regarding claim 7, Beatty discloses that the plant shell is a standard size and shape (see fig 3).

Regarding claim 8, Beatty discloses that the plant shell is a standard size and shape (see fig 3).

Regarding claim 9, Beatty discloses that the plant shell 30 provides desirable nutrition and water retention (col 3, lines 30-60).

Regarding claim 11, Beatty discloses that the shell structure breaks down with the pressure of moisture (col 4, lines 4-20).

Allowable Subject Matter

Claims 4, 10, 12, 13, 16, 17, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gaskins, Jr. US2069580; Tennant, Jr. US2848842; Bergann US 3233365; Ezoe US5523331; Howell US6173531; Kay US6195938; Graf DE4035223A1; Komatsu JP05304835A.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703.308.2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703.306.4196 for regular communications and 703.305.3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.306.5771.

Charles T. Jordan
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